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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-186802

**DATE:** NOV 30 1976

**MATTER OF:** Robert L. Fondron - Request for waiver  
of indebtedness

**DIGEST:** Civilian employee requests waiver of Army claims against him for optional life insurance payments that Army failed to deduct from his pay from October 7, 1970 through December 22, 1973, in the amount of \$254.40. Request for waiver is denied since numerous inquiries by employee to responsible officials regarding propriety of amount of deductions indicate he was aware there was some question as to the correctness of his pay; also, it would not be inequitable to require payment because optional life insurance was in force during period when no deductions were made therefor. B-186137, December 28, 1973, distinguished.

Mr. Robert L. Fondron, a civilian employee of the Department of the Army, seeks reconsideration of the determination dated December 9, 1975, by our Transportation and Claims Division (now Claims Division) denying his request for waiver of indebtedness to the United States for overpayment of pay in the gross amount of \$254.40.

As was stated in the determination of December 9, 1975, the record shows that deductions for optional life insurance premiums, which were previously in effect, were erroneously discontinued following Mr. Fondron's transfer from Charleston Army Depot, South Carolina, to the U.S. Army Forces Southern Command, Canal Zone, on October 7, 1970. A short time after his transfer to the Canal Zone, Mr. Fondron suspected that the deductions from his pay for regular life insurance and optional insurance were incorrect and contacted the Finance and Accounting Office and Civilian Personnel Office to assure that both types of insurance were in force and the deductions were correct.

The record further indicates that despite assurances from the Finance and Accounting Office and the Civilian Personnel Office that everything was in order, Mr. Fondron was not satisfied that adequate amounts were being deducted from his pay, since he continued

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to contact these Offices to question the propriety of the insurance premium deductions. Deductions for optional life insurance premiums were not made from October 7, 1970 through December 22, 1973, resulting in an erroneous payment in the amount of \$254.40. Mr. Fondren has refunded the erroneous payment and seeks reimbursement on the basis of decision B-180137, December 28, 1973.

Mr. Fondren contends that he did not know that erroneous payments were being made and that he had no responsibility to take further action after being assured by responsible operating officials that the insurance coverage was in force and the proper deductions were being made. Assuming this is so, it does not necessarily follow that Mr. Fondren is entitled to a waiver of the claim against him. Section 5584(a) of title 5 of the United States Code, provides that a claim of the United States against a person arising out of an erroneous payment of pay may be waived if the collection of the claim would be against equity and good conscience and not in the best interests of the United States.

We cannot say in this case that collection of the claim would be against equity and good conscience. Mr. Fondren's optional life insurance coverage continued between October 7, 1970 and December 22, 1973, even though no premium deductions were made. This is so since 5 C.F.R. 871.203 (1973) states at subsection (a) as follows:

"The effective date of an election of optional insurance is the first day an employee actually enters on duty in a pay status on or after the day the election is received in his employing office."

Once effective, optional insurance can be cancelled only by the employee's becoming ineligible for coverage or the employee's written cancellation. Since Mr. Fondren had elected the optional insurance, never rescinded the election and did not become ineligible for the coverage during the period that no deductions were made, then he received the full benefits of the optional life insurance coverage despite the fact that no insurance premiums were withheld. See B-183249, June 23, 1975.

This case is distinguishable from our decision in B-120137, December 26, 1973. In that case, when the employee at age 52 elected optional life insurance coverage, she arguably had been given sufficient information of the fact that her pay deductions for the insurance would increase at age 55. When she reached age 55, no increased deductions were made, and the error was not discovered until 2 years later. Upon notification of the overpayment, she immediately cancelled the optional life insurance coverage. We held that someone without special knowledge of health insurance and personnel laws could not reasonably be expected to remember for 3 years that additional life insurance deductions would be withheld from her pay. Furthermore, we found that there was no significant event, such as a personnel action or fluctuation in salary when she reached age 55, that would allow us to find as a matter of law that she knew of the administrative error.

In the present case, Mr. Fondren was aware that there was some question as to the correctness of the amount of pay he had received. While we do not think that Mr. Fondren was at fault in this matter, nevertheless, we think he cannot reasonably expect reimbursement of the excess pay which he refunded when the error was finally corrected. In such a case, where the employee suspected insufficient insurance premium deductions caused an overpayment of pay, his beneficiaries would have received the optional life insurance benefits had he died during the period the premiums were not deducted, and he opted to continue the insurance coverage after administrative recognition and correction of the overpayment, it is not against equity and good conscience to refuse to waive collection of the claim.

In view of the above, we must sustain the determination of our Claims Division to deny the requested waiver.

R. F. Keller  
Deputy Comptroller General  
of the United States